Rocky Mountain Insulating Company *and* International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 28. Cases 27-CA-7002 and 27-CA-7241

February 11, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

Upon a charge filed in Case 27-CA-7002 on November 12, 1980, a first amended charge filed therein on January 19, 1981, and a subsequent charge filed in Case 27-CA-7241 on April 2, 1981, by International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 28, herein the Union, and duly served on Rocky Mountain Insulating Company, herein Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 27, issued a complaint on January 20, 1981, and an order consolidating cases and consolidated complaint and a notice of hearing on May 1, 1981. On May 18, 1981, the Acting Regional Director for Region 27 issued an amendment to the consolidated complaint. The consolidated complaint, as amended, alleges that Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended.

With respect to the unfair labor practices, the consolidated complaint alleges in substance that at all times material herein and since on or about July 19, 1977, the Union has been the designated exclusive collective-bargaining representative of Respondent's employees in an appropriate unit, and that since on or about July 19, 1977, the Union has been recognized as such representative by Respondent and such recognition has been embodied in a collective-bargaining agreement effective by its terms for the period August 1, 1978, to May 31, 1981.[1] The complaint further alleges that on or about October 1, 1980, the Union requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of its employees in the appropriate unit with respect to their rates of pay, wages, hours of employment, and other terms and conditions of employment and that since October 1, 1980, Respondent has illegally and unilaterally repudiated its collective-bargaining relationship with the Union and refuses to comply with the current collective-bargaining agreement in effect between Respondent and the Union. The complaint also alleges that since on or about February 10, 1981, Respondent has failed and refused to furnish information requested by the Union concerning the identity of and hours worked by bargaining unit employees of Respondent.

On September 2, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, asserting that Respondent had failed to file an answer to the complaint. Subsequently, on September 14, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has filed no response to the Notice To Show Cause and, accordingly, the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as *amended*, provides:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

According to the uncontroverted allegations of the Motion for Summary Judgment, Respondent failed to file an answer to the complaint. Moreover, as no answer had been filed, on August 10,

[1] By memorandum dated July 19, 1977, Respondent designated the Western Insulators Contractors Association, Denver Chapter, of Denver, Colorado, a multiemployer bargaining association, as its bargaining representative. By the terms of the memorandum Respondent agreed to adopt any existing and successor contracts entered into between the Union and the Western Insulators Contractors Association. The subsequent collective-bargaining contract, to which Respondent became a party, had a duration of August 1, 1978, to May 31, 1981. There is no indication whether a new contract replaced the one expiring on May 31, 1981. However, absent timely notice, pursuant to its contract, of an intent to terminate the contract, Respondent would be bound to a successor contract negotiated by the Union and the multiemployer association. See *Phoenix Air Conditioning, Inc.*, 231 NLRB 341 (1977).

1981, Region 27 contacted Respondent informing it that Regional Office records indicated that Respondent had not filed an answer, and that, if an appropriate answer were not filed by August 17, 1981, a Motion for Summary Judgment would be sought. No good cause to the contrary having been shown, in accordance with the rule set forth above, the allegations of the complaint herein are deemed to be admitted and found to be true. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

At all times material herein, Respondent, a sole proprietorship of Walter Lemons, has maintained its principal office and place of business at Casper, Wyoming, where it is engaged in the insulation contracting business. Respondent, in the course and conduct of its business operations, annually purchases and receives goods and materials valued in excess of $50,000 directly from points and places outside the State of Wyoming, and annually performs services valued in excess of $50,000 for employers, each of which in turn annually purchases and receives goods and materials valued in excess of $50,000 directly from points and places outside the State of Wyoming.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 28, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Collective-Bargaining Representative*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All journeymen and apprentice insulation mechanics employed by Respondent, but excluding office clerical employees, and all guards, professional employees and supervisors as defined in the Act.

2. The bargaining history

At all times since July 19, 1977, the Union has been the designated exclusive collective-bargaining representative of Respondent's employees in an appropriate unit and, by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

B. *The Request To Bargain and Respondent's Refusal*

Since on or about October 1, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with the Union as the exclusive representative for the purposes of collective bargaining of all employees in the above-described unit and Respondent has illegally and unilaterally repudiated its collective-bargaining relationship with the Union. Also, since on or about February 10, 1981, Respondent has failed and refused to furnish information requested by the Union concerning the identity of and hours worked by bargaining unit employees of Respondent.

Accordingly, we find that Respondent has, since October 1, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, honor and abide by the memorandum and existing collective-bargaining agreements (giving retroactive effect thereto from their respective dates in 1977 and 1978), and, upon request, bargain collectively with the Union as the exclusive representative of

all employees in the appropriate unit. Respondent shall also make whole its employees represented by the Union for any loss of pay or employment benefits as a result of its unilateral action in repudiating and refusing to honor the said agreements. *Ogle Protection Service, Inc., and James L. Ogle, an Individual*, 183 NLRB 682 (1970). Payments to said employees shall bear interest as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977) (see, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962)). We shall also order Respondent to post appropriate notices.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Rocky Mountain Insulating Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 28, is a labor organization within the meaning of Section 2(5) of the Act.

3. All journeymen and apprentice insulation mechanics employed by Respondent, but excluding office clerical employees, and all guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since July 19, 1977, the above-named labor organization has been and is now the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about October 1, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, by its subsequent repudiation and failure to honor the memorandum and existing collective-bargaining agreement between Respondent and the Union following demand by the Union for continued compliance therewith, and by refusing on or about February 10, 1981, and at all times thereafter, to furnish information requested by the Union concerning the identity of and hours worked by bargaining unit employees of Respondent, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act and thereby has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Rocky Mountain Insulating Company, Casper, Wyoming, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 28, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All journeymen and apprentice insulation mechanics employed by Respondent, but excluding office clerical employees, and all guards, professional employees and supervisors as defined in the Act.

(b) Refusing to furnish information requested by the Union concerning the identity of and hours worked by bargaining unit employees of Respondent.

(c) Repudiating or refusing to honor the terms of the memorandum and existing collective-bargaining agreements between Respondent and the Union following demand by the Union for continued compliance therewith.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment.

(b) Honor and abide by the memorandum and existing collective-bargaining agreements, giving retroactive effect thereto from their respective effective dates in 1977 and 1978.

(c) Make whole its employees in the appropriate unit described above, in the manner set forth in the section of this Decision entitled "The Remedy," for any loss of pay or employment benefits as a

result of its repudiating and refusing to honor the aforesaid agreements.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its Casper, Wyoming, location copies of the attached notice marked "Appendix."[2] Copies of said notice, on forms provided by the Regional Director for Region 27, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 27, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[2] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 28, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to furnish information requested by the Union concerning the identity of and hours worked by our bargaining unit employees.

WE WILL NOT repudiate or refuse to honor the terms of the memorandum and existing collective-bargaining agreements between us and the Union following demand by the Union for continued compliance therewith.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

WE WILL, upon request, bargain with the above-named Union as the exclusive representative of all employees in the bargaining unit described below with respect to rates of pay, wages, hours and other terms and conditions of employment. The bargaining unit is:

All journeymen and apprentice insulation mechanics employed by the Employer but excluding office clerical employees, and all guards, professional employees and supervisors as defined in the Act.

WE WILL honor and abide by the contracts we entered into with the Union and give retroactive effect thereto from their respective effective dates in 1977 and 1978.

WE WILL make whole our employees in the bargaining unit described above for any loss of pay or other employment benefits they may have suffered by reason of our refusal to honor and abide by the aforesaid contracts between the Union and us, with interest.

ROCKY MOUNTAIN INSULATING COMPANY